

**RE COPY**

Office - Supreme Court, U. S.

**FILED**

MAY 28 1947

CHARLES ELMORE BROPLEY  
CLERK

# **SUPREME COURT OF THE UNITED STATES.**

\_\_\_\_\_  
OCTOBER TERM, 1946.  
\_\_\_\_\_

No. 575.

\_\_\_\_\_  
WILLIAM K. GORUM and NATIONAL MUTUAL CASUALTY  
COMPANY,  
Petitioners,

vs.

\_\_\_\_\_  
RUBY O. LOUDENSLAGER and CHARLOTTE  
LOUDENSLAGER.  
\_\_\_\_\_

## **PETITION FOR REHEARING.**

\_\_\_\_\_  
JOSEPH N. HASSETT,  
Counsel for Petitioners.

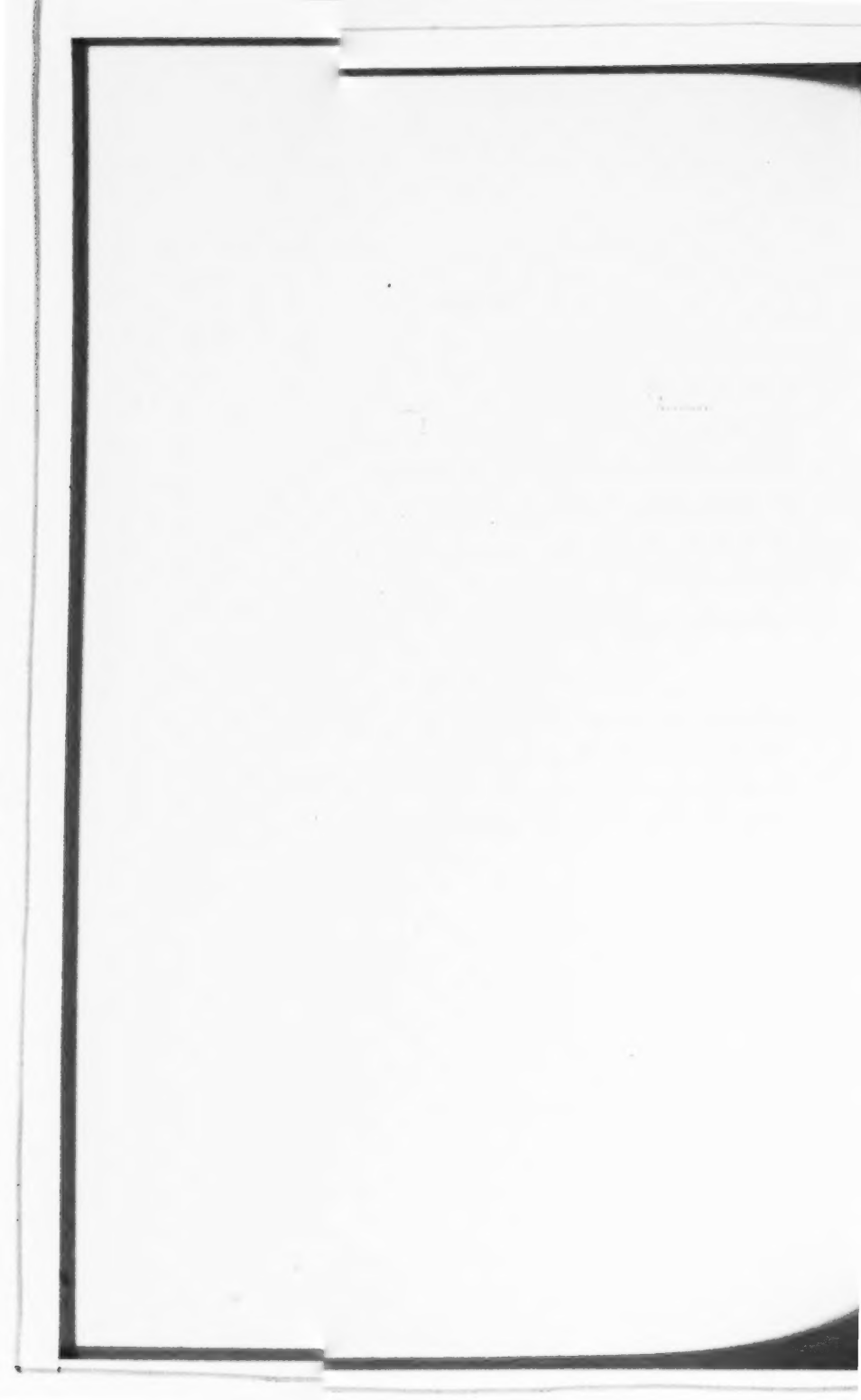


## INDEX.

	Page
Petition for rehearing.....	1-5
I. Jurisdiction .....	1
II. Reasons for petition for rehearing.....	2
III. Controlling question.....	4
IV. Public importance.....	4
V. Prayer .....	4
Certificate of counsel.....	5

### Cases Cited.

Magnolia Petroleum Company v. Hunt, 320 U. S. 430, 64 Sup. Ct. 208, 88 L. Ed. 149.....	2
Troxell v. Delaware L. & W. R. Co., 227 U. S. 434, 33 Sup. Ct. 274, 57 L. Ed. 586.....	2, 3



# **SUPREME COURT OF THE UNITED STATES.**

---

**OCTOBER TERM, 1946.**

---

**No. 575.**

---

**JACK GORUM and NATIONAL MUTUAL CASUALTY  
COMPANY,  
Petitioners,**

**vs.**

**RUBY O. LOUDENSLAGER and CHARLOTTE  
LOUDENSLAGER.**

---

## **PETITION FOR REHEARING.**

---

Come now the above named petitioners, Jack Gorum and National Mutual Casualty Company, and present this their petition for a rehearing of the petition for writ of certiorari in this case.

### **I.**

#### **JURISDICTION.**

The petition for certiorari was filed on the 5th day of October, 1946, and denied on the 5th day of May, 1947. This petition is filed within twenty-five days thereafter, under Rule 33 of this Court.

II.

**REASONS FOR PETITION FOR REHEARING.**

On reconsidering the petition for writ of certiorari and supporting brief, petitioners believe that said petition for writ of certiorari and supporting brief do not sufficiently call to this Court's attention the fact that the judgment and opinion of the Supreme Court of Missouri are based upon a misconstruction of the opinions of this Court in the cases of *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 64 Sup. Ct. 208, 88 L. Ed. 149; and *Troxell v. Delaware L. & W. R. Co.*, 227 U. S. 434, 33 Sup. Ct. 274, 57 L. Ed. 586.

In its opinion the Supreme Court of Missouri quoted from the language of this Court in the case of *Magnolia Petroleum Company v. Hunt*, 64 Sup. Ct., l. c. 216, as follows:

"The fact that suitor has been denied a remedy by one state because it does not afford a remedy for the particular wrong alleged would not bar a recovery in another state which does provide a remedy."

The Supreme Court of Missouri misconstrued this language to mean that the Missouri Workmen's Compensation Commission was not required to give full faith and credit to the final, conclusive award of the Arkansas Workmen's Compensation Commission, duly pleaded and proven in the Missouri proceeding, because compensation in the Arkansas proceeding was sought under the Arkansas Workmen's Compensation Act, and the compensation sought in the Missouri proceeding was sought under the Missouri Workmen's Compensation Act, even though both Arkansas and Missouri afforded a remedy to the widow of the deceased if he were an employee, and both States denied a remedy to her if he were not an employee, and recovery

under both claims depended upon proof that deceased was an employee, and recovery in the Arkansas proceeding was denied because the evidence failed to prove that deceased was an employee.

The above construction placed on the language of this Court, above quoted, is beyond doubt contrary to the ruling of this Court in the Magnolia Petroleum Company case.

In the Troxell case an action was brought under the Federal Employer's Liability Act to recover on account of the death of an employee growing out of negligence of a fellow servant. A prior judgment was pleaded as res judicata. The prior action had been to recover damages on account of the death of the employee under the Pennsylvania law, which did not afford a remedy for such death if it resulted from the negligence of a fellow servant. The Court held that the first judgment was not res judicata because the remedy sought in the second action could not be afforded in the first action. This Court observed that the right to recover under the Pennsylvania law was not involved in the second action, and the right to recover on account of the negligence of the fellow servant was not involved in the first action. The Court held that the first judgment was not res judicata because the remedy sought in the second action could not be granted plaintiff in the first action. The ruling in the Troxell case does not depend upon the fact that the right to recover asserted in the first action was not passed on in the second action, nor on the fact that the right asserted in the second action was not passed upon in the first action. Yet the Missouri Supreme Court has construed that opinion to mean that if the right to recover under the Missouri Workmen's Compensation Act was not involved in the Arkansas proceeding, and if the right to recover under the Arkansas Workmen's Compensation Act was not involved in the Missouri

proceeding, the Missouri Courts need not give full faith and credit to the final, conclusive award of the Arkansas Workmen's Compensation Commission.

### III.

#### **CONTROLLING QUESTION.**

The controlling question here is whether the Missouri Workmen's Compensation Commission, in a subsequent proceeding, must give full faith and credit under Art. IV, Sec. 1 of the Constitution of the United States to the prior, final, conclusive award of the Arkansas Workmen's Compensation Commission, where both claims for compensation were based upon the same injury and death, and where both States afforded a remedy to the widow of an employee on account of such death, and she prosecuted both claims on the theory that the deceased was an employee.

### IV.

#### **PUBLIC IMPORTANCE.**

The issues involved in this case are of public and general importance. It involves the rights of all employers and employees where the employee resides in one state and is working in another state, and will have an important bearing upon the willingness of employers to hire employees residing in states other than the place of their employment, and involves the right of one state to relitigate a second time issues that have been adjudicated in another state.

### V.

For the foregoing reasons, petitioners, Jack Gorum and National Mutual Casualty Company, respectfully urge



that a rehearing be granted; that, upon further consideration, the order of May 5th, 1947, denying the petition for certiorari, be revoked, and that the writ of certiorari issue.

JOSEPH N. HASSETT,  
Counsel for Petitioners.

I, Joseph N. Hassett, counsel for the above named petitioners, Jack Gorum and National Mutual Casualty Company, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith and not for delay.

Joseph N. Hassett,  
Counsel for Petitioners.